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**IN THE
COURT OF APPEALS OF INDIANA**

KURT M. TAYLOR,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 61A04-0611-CR-650
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE PARKE CIRCUIT COURT
The Honorable Sam A. Swaim, Judge
Cause No. 61C01-0510-FC-232

June 4, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Kurt M. Taylor (“Taylor”) appeals his convictions and sentences for burglary as a Class C felony¹ and receiving stolen property as a Class D felony.² We affirm.

Issues

Taylor raises two issues on appeal, which we restate as:

- I. Whether the trial court abused its discretion in denying Taylor’s Motion for Continuance, where he had been represented by counsel for eleven months, but so moved just one week before trial, and
- II. Whether his sentence was inappropriate.

Facts and Procedural History

The evidence most favorable to the verdicts is as follows. Richard Jensen (“Jensen”) owned eighty-seven acres in Parke County, including a pole barn and two travel trailers. Taylor offered an all-terrain vehicle (“ATV”) and a golf cart to Michael Scifres (“Scifres”) for assistance in moving some stolen property. Over the course of two days in October of 2005, Taylor broke into and ransacked the pole barn and the travel trailers, taking certain items. In total, Taylor exerted control over a tractor, a cargo trailer, a “Gator,” two ATVs, three golf carts, a shotgun, a television, a lawn mower, chain saws, various tools, and many other items. Tr. at 146.

Driving a truck on Jensen’s wooded property, Taylor became stuck. After Taylor and Scifres used Jensen’s tractor to try unsuccessfully to free the truck, they spent the night in a camper on Jensen’s property. The next day, Jensen and his son were on the property and

¹ Ind. Code § 35-43-2-1.

observed signs of recent activity. When Jensen's son heard voices in the woods, Jensen called 911. Jensen and Officer Bradley McNeill ("Officer McNeill") walked into the woods and observed Taylor on Jensen's tractor. Officer McNeill arrested him.

The State charged Taylor with six counts: three counts³ of burglary as a Class C felony, with the intent to commit theft⁴ therein,⁵ and three counts⁶ of receiving stolen property as a Class D felony. At trial, the State dismissed one of the latter counts.

The trial court appointed counsel for Taylor on October 24, 2005. On April 26, 2006, the trial court scheduled trial for September 20 to 22, 2006. One week before trial, Taylor moved for a continuance, stating that he had "contacted a Terre Haute attorney about his case and wishes to hire private counsel to represent him."⁷ App. at 30. The trial court denied the motion.

Of the five counts brought to trial, the jury found Taylor guilty of two counts: burglarizing buildings of Richard Jensen and receiving stolen property belonging to Richard Jensen.⁸ The trial court found three aggravating circumstances: (1) the harm to the victim "was significant and greater than the elements necessary to prove the commission of the

² Ind. Code § 35-43-4-2(b).

³ In different counts, the State alleged that Taylor broke and entered the buildings or structures of three different persons, Richard Jensen, Barbara Jensen, and Shawn McCoy.

⁴ Ind. Code § 35-43-4-2.

⁵ Count I, for the burglary of Richard Jensen's building, was amended to change the alleged dates of the incident.

⁶ In different counts, the State alleged that Taylor knowingly received, retained, or disposed of the property of three different persons, Richard Jensen and "Allen & Linda Brown." App. at 22 and 23.

⁷ Taylor also argued below, but not on appeal, that he needed additional time for discovery because the State filed its witness and exhibit lists twelve days late, on September 7, 2006, which caused the State to provide follow-up materials on September 11, 2006.

⁸ The jury found Taylor not guilty of the three counts relating to the buildings and property of Barbara Jensen, Shawn McCoy, Allen Brown, and Linda Brown.

crime,” (2) Taylor’s criminal history, and (3) Taylor violated probation and was on probation at the time of the instant offenses, and two mitigating circumstances: (1) Taylor’s offer to pay restitution, and (2) his imprisonment would result in undue hardship for his dependents. App. at 9. Finding that the aggravating circumstances outweighed the mitigating circumstances, the trial court sentenced Taylor to the maximum, eight-year term of imprisonment for burglary as a Class C felony, and one and one half years for receiving stolen property as a Class D felony. The sentences were to be served concurrently and executed entirely, but the final two years could be served on home detention. Taylor now appeals.

Discussion and Decision

I. Denial of Continuance

Taylor argues that the trial court abused its discretion in denying his Motion for Continuance of the trial. “Upon motion, trial may be postponed or continued in the discretion of the court, and shall be allowed upon a showing of good cause established by affidavit or other evidence.” Ind. Trial Rule 53.5. “The determination of whether to grant a continuance lies within the sound discretion of the trial court when the motion is not based upon statutory grounds. There is a strong presumption that the trial court properly exercised its discretion.” Warner v. State, 773 N.E.2d 239, 247 (Ind. 2002) (citations omitted). While the Sixth Amendment establishes the right to choose one’s counsel when a defendant is financially able to do so, that right is not absolute and must be exercised at the appropriate stage in the proceeding. Lewis v. State, 730 N.E.2d 686, 688-89 (Ind. 2000) (citations

omitted). “Continuances sought shortly before trial to hire a new attorney are disfavored because they cause substantial loss of time for jurors, lawyers, and the court.” Id.

Taylor had the benefit of an attorney for eleven months prior to and at trial. On appeal, he acknowledges that a continuance would have inconvenienced the State as it had arranged for multiple witnesses from other counties to testify. Indiana Trial Rule 53.5 allows the trial court discretion to continue a trial where an affidavit or other evidence establishes good cause for delay. In his motion, made seven days before trial, Taylor stated simply that he wanted to hire a new attorney, without suggesting a reason. We conclude that the trial court did not abuse its discretion in denying Taylor’s Motion for Continuance.

II. Appropriateness of Sentence

Taylor further argues that his sentence was inappropriate in light of the nature of the offenses and his character. Indiana Appellate Rule 7(B) provides that “[t]he Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.”

As to the nature of the offenses, Taylor recruited Scifres to assist him in removing stolen property from Jensen’s land. They spent two days on Jensen’s property, exerting control over seven vehicles, a cargo trailer, a television, and what the trial court described as “most everything of any value.” Sentencing Tr. at 18. Taylor broke into and ransacked a barn and two trailers. When a truck used in commission of the offenses became stuck, Taylor used Jensen’s tractor to try to extricate it. Unable to do so, he and Scifres spent the

night in the victim's camper, eating the victim's food.

On appeal, Taylor emphasizes that he committed the offenses without violence; however, he was not charged with an elevated or violent offense. Taylor further argues that he committed the offenses while the victim was away. That is not true. In fact, Taylor was on Jensen's tractor when Jensen and Officer McNeill first saw him. While Jensen was not on his property when Taylor began his work, Taylor lingered for two days and accepted the risk that the owner would return. Jensen did.

Taylor acknowledges that the loss of property was substantial, but argues that most of the property loss was covered by insurance. The argument ignores that an insurance company paying claims on stolen items is simply another victim of the offenses. We decline to establish under Indiana Appellate Rule 7(B) an incentive for the theft of insured over uninsured articles.

On appeal, Taylor makes no argument regarding his offer to pay restitution, which might speak for his character. Conversely, Taylor argues that his daughters will face undue hardship from his imprisonment, but he fails to explain how that reflects upon his character, the subject of our analysis under Indiana Appellate Rule 7(B). He states merely that imprisonment will prevent him from paying child support and "the girls need him." Appellant's Br. at 14. Despite Taylor's omission to argue that his support of his daughters demonstrates a favorable character, we take note of his mother's testimony at sentencing that he paid child support and was supportive of his daughters after a prior term of imprisonment. We also note the written statement of Taylor's former employer, who stated that Taylor had

been “very professional,” “worked well,” and that he would re-hire Taylor after his imprisonment.

Taylor apologized to Jensen at sentencing, but the trial court did not find Taylor’s remorse as a mitigating circumstance. In summarizing his version of the offenses for purposes of the presentence investigation report, Taylor began, “[s]tuck at the wrong place at the wrong time!” P.S.I.R. at 95. While he also apologized and asked for the court’s mercy in this statement, we are not overwhelmed by Taylor’s appreciation of the gravity of his conduct.

Taylor was first arrested at age twenty-two. He was convicted of three alcohol-related misdemeanors in the late 1980s. In 2004, he was arrested on two charges, but both were dismissed. In early 2005, Taylor was convicted of two misdemeanors, invasion of privacy and harassment, for which he received probation. He was on probation when he committed the instant offenses. We recognize that three of the misdemeanors were related to alcohol and committed many years prior to the instant offenses. See Ruiz v. State, 818 N.E.2d 927, 928-29 (Ind. 2004). However, despite his arrests in 2004, his convictions in 2005, and Taylor’s commission of the instant offenses while on probation, multiple recent contacts with the criminal justice system are not persuading Taylor to reform his conduct. See Weiss v. State, 848 N.E.2d 1070, 1073 (Ind. 2006). Finally, we note that while Taylor received the maximum term of imprisonment for burglary as a Class C felony, he received a concurrent sentence for receiving stolen property as a Class D felony.

Indiana Appellate Rule 7(B) makes clear that we conduct our review of the

defendant's sentence after due consideration of the trial court's decision. In light of the above considerations, we conclude that Taylor's sentence was not inappropriate in light of the nature of the offenses and his character.

Conclusion

We conclude that the trial court did not abuse its discretion in denying Taylor's Motion for Continuance. Further, we conclude that Taylor did not establish that his sentence was inappropriate in light of the nature of the crime and his character.

Affirmed.

SHARPNACK, J., and MAY, J., concur.